Supreme Court, U.S.
FILED
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(1)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Meredith T. Raney, Jr.,

Petitioner,

v.

City of Melbourne, Florida,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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46 pp

QUESTIONS PRESENTED

Has the United States Court of Appeals so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision wrongly rewards gross abuse of the Supreme Court's trust in allowing the *Madsen* injunction?

Has the United States Court of Appeals so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision violates the high standard of concern for women's lives and health enunciated by this Court in abortion cases from *Roe* and *Doe* to *Stenberg*?

Has the United States Court of Appeals so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision has deviated from the concept of allowing sympathetic, trained volunteers to act as abortion counselors, as first described in *Roe* and later regulated in *Schenck* and most recently in *Hill*?

Has the United States Court of Appeals so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision has deviated from the standard provided by this Court in *Casey* which provides that pregnant women considering abortion can receive truthful, relevant information?

Has the United States Court of Appeals so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision abandons the promise made by the Court of Appeals in *McKusick v. City of Melbourne* that it would protect civil

rights in the *Madsen* buffer zone?

Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court's supervisory authority by failing to follow its own decision in *Cheffer v. Reno* which provides that access to the entrances of abortion clinics is part of interstate commerce, in effect providing *forum* opportunities for F.A.C.E.-protected pro-life referral counselors in these facilities?

Has the United States Court of Appeals so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power by failing to maintain the constitutional standard of "good Behaviour" required of federal judges?

Has the United States Court of Appeals entered a decision in conflict with a nationally important ruling of another U.S. Court of Appeals which proclaims the duty of the appellate courts to maintain the integrity of district courts?

PARTIES TO THE PROCEEDING

"Petitioner"

Meredith T. Raney, Jr.

"Respondent"

City of Melbourne, Florida

NOTE TO THE UNITED STATES SUPREME COURT CONCERNING PARTIES IN RELATED ELEVENTH CIRCUIT CASES:

Prospective Petitioners: Ray Sienkiewicz of *Sienkiewicz v. McDougall*, and *Sienkiewicz v. Hart, et al.*, U.S. Court of Appeals No's: 00-12634-II, 00-13805-II, and 00-14228-FF, F.A.C.E. actions for intimidating pro-life counselors with problems of judicial impropriety.

Prospective Respondents: John McDougall and Rod Shoap in *Sienkiewicz v. McDougall* (1 and 2). Larry Hart, Janet Reno, William Clinton, Charles Wilson (of the Eleventh Circuit) and Jill Babyack in *Sienkiewicz v. Hart*.

PETITIONS ALREADY FILED

Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc., et al., Supreme Court Number 00-1268.

Jane Roe, II v. Aware Woman Center For Choice, Inc., et al. Supreme Court Number 00-1301.

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Second Issue: **8**

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision violates the high standard of concern for women's lives and health enunciated by this Court in abortion cases from *Roe* and *Doe* to *Stenberg*.

Third Issue: **9**

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision has deviated from the concept of allowing sympathetic, trained volunteers to act as abortion counselors, as first described in *Roe* and later regulated in *Schenck* and most recently in *Hill*.

Fourth Issue: **10**

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Fifth Issue: **11**

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Sixth Issue: **13**

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory authority by failing to follow its own decision in *Cheffer v. Reno* which provides that access to the entrances of abortion clinics is part of interstate commerce, in effect providing *forum* opportunities for F.A.C.E.-protected pro-life referral counselors in these facilities.

Seventh Issue: **14**

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power by failing to maintain the constitutional standard of "good Behaviour" required of federal judges.

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Petitioner, Meredith T. Raney, Jr., respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the District Court in *Raney v. City of Melbourne*, Case Number 99-416-ORL-19B is shown at Appendix A. The United States Court of Appeals for the Eleventh Circuit in *Raney v. City of Melbourne*, Case Number: 00-11403 directed that its order not be published; it is shown as Appendix B. The order of the United States Court of Appeals denying petition for rehearing and petition for rehearing *en banc* is said to reported at F2d and is found at Appendix C.

STATEMENT OF JURISDICTION

The decision of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") was entered on November 15, 2000. The Court of Appeals denied a timely petition for rehearing *en banc* on January 5, 2001.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article III of the United States Constitution, which states in pertinent part:

Section 1. . The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour .

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
>
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies.** -
>
> **(1) Right of action**.-
>
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . .
>
> **(e) Definitions.**- As used in this section:
>
> **(1) Facility.**- The term "facility" includes a hospital, clinic, physicians office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.
>
> **(5) Reproductive health services.**- The term "reproductive health services" means reproductive health services provided in a

hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

A. Background

Twenty eight years ago, there was no pro-life movement as we know it today. And there were certainly no referral counselors.

Roe and *Doe* changed all that. At first, those concerned with the sanctity of life concentrated their efforts on corporate solutions to outlaw abortion, especially legislative efforts to overturn the Supreme Court decisions and to restrict the availability of abortion. Virtually none of these efforts met with any major success.

After about fifteen years of futility, younger, perhaps more idealistic advocates, transformed the pro-life movement from the legislative efforts to one of direct action in the streets: the rescue movement was born.

"Rescue" entailed the blockading of abortion clinic entrances so that pregnant women were physically unable to obtain abortions. While the earlier pro-life movement had involved some major marches and demonstrations, these activities were always in an area in which large numbers, even hundreds of thousands of persons, could congregate without any violation of criminal statutes. Rescues were different.

At most "rescues", the vast majority of participants sat in the entranceway of the abortion clinics and eventually were dragged off by the police. In the interval, when pregnant women were effectively barred from entering the clinics, there

would be "sidewalk counselors" with written referral information, who would offer help to these young women.

The abortion industry, by the early 1990's, was not only anxious to put an end to the rescue movement, but was also endowed with considerable government influence . Thus, the Freedom of Access to Clinic Entrances Act was passed in 1994. This act accomplished its purpose: it destroyed the rescue movement.

While those who had, for the most part, sat in the doorways of abortion clinics now withdrew from on-the-street activity, some changed their *modus operandi* significantly. Many learned from the "sidewalk counselors" the effective techniques in offering love and help to the people going and coming at abortion clinics. Many enrolled in courses sponsored by crisis pregnancy centers to learn more about abortion counseling. Many studied the case law and statutes, particularly F.A.C.E., in order to conduct themselves in a lawful manner. Many compiled information about the specific abortion clinics with which they affiliated themselves, particularly the dangers and hazards peculiar to each clinic. And many compiled lists and information about the resources available to pregnant women in their own neighborhoods. "Sidewalk counselors" were becoming "referral counselors".

It is evident that the federal trial and appellate judges have never stood at the doorway to an abortion clinic in an effort to lawfully and lovingly offer help to desperate women. They would know that such counselors strive mostly to receive information and rarely state an opinion on any topic. Much of their communications is done with smiles and love-brightened eyes and with an outstretched hand.

Such counselors often receive information from pregnant young women, not in conversational tones over a distance of

several feet but in whispers perhaps only audible for a matter of inches. Thus it is with the most intimate and private of conversations.

Any protestors and demonstrators coming within earshot of the referral counselors interfere with their services. Operating in one's and two's, referral counselors do not carry signs nor do they engage in debate. Signs and loud protest simply drive pregnant young women into the clinic without their first stopping to speak with the counselor and to obtain referral information. For this reason, the pro-life referral counselors have applauded the Supreme Court's wisdom in approving a location for protestors more remote from the clinic entrance than is occupied by *Schenck* counselors. Under these conditions, they can work much more effectively.

Yet, it is not only the women considering abortions with whom the referral counselors speak. Many of the women do not know that they are being brought to an abortion clinic. These women are not yet considering an abortion. Rarely is the word "abortion" visible on any clinic sign. For such women, the counselor may supply the initial awareness that an abortion for her is being sought by her companion.

Some of the young women who come to clinics may be there to deal with an onslaught of guilt and despair for a previous abortion. In these instances, the referral counselor may spend more time listening to chilling screams for the lost child than in providing the needed referral information to this grief-stricken girl.

Occasionally, the referral counselor must deal with anguished fathers, perhaps hate-filled, seeking to destroy the abortionist in retaliation for the loss of their children. And there has been at least one instance where the counselor tried to help a distraught young mother who was bitterly cursing the

abortionist for cruelly murdering her with a deadly viral infection because of his slovenly refusal to sterilize his instruments.

The services of these dedicated and sympathetic volunteers - these referral counselors - are essential for the health and safety of pregnant young women. These counselors must be stationed at the doorway to the clinic, in two's, and independent of the abortion business with which they are affiliated. They are lawfully in the abortion facility. They qualify for and deserve federal F.A.C.E. protection.

B. The Proceeding Below

This is the third and final F.A.C.E. case in the Aware Woman Center For Choice, Inc. trilogy, all of which were adjudicated by District Judge Patricia Fawsett and all of which originated at the abortion clinic at 1564 Dixie Way, Melbourne, Florida featured in the *Madsen* decision.

After Judge Fawsett granted her own motion for summary judgment in *Raney v. Aware Woman Center for Choice, Inc.*, Case No.: 97-1197-CIV-ORL-19B, mainly on the question of control over police, Meredith Raney reasoned that the City of Melbourne must have control over the police officers and city equipment even if the abortion clinic did not.

Omitting the three instances described in *Raney v. Aware Woman Center for Choice, Inc.*, the present complaint was filed against the City of Melbourne. It responded with a motion to dismiss with a supporting memorandum. The counselor utilized the Local Rules provision which allows the filing of a brief in opposition to a particular motion and then moved to strike all of the City's defenses as legally insufficient, filing at the same time a supporting brief. Oddly,

there was no opposition brief served by the City of Melbourne to the motion to strike.

The *City of Melbourne* case contains a shadow of the extra-judicial influences which become so ominous in more recent cases. Here there has been the collateral concern about a missing brief - or was it a non-existent brief. Items in the Select Exhibits to Appendix A provide some details but fail to convincingly resolve the question.

The district judge granted the City's motion to dismiss. Thereafter, timely appeal was taken to the United States Court of Appeals, Eleventh Circuit.

Following an unsuccessful appeal and subsequent petition for rehearing *en banc*, this timely petition for writ of certiorari is filed with the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT

I

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision wrongly rewards gross abuse of the Supreme Court's trust in allowing the *Madsen* injunction.

The United States Supreme Court granted the abortion clinic in Melbourne, Florida a great deal of authority over the use of public property adjoining their own private real estate. This authority was never meant to be absolute. *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994), and the trial judges and appellate judges in the Eleventh Circuit should have known this to be so.

Following the *Madsen* decision, the "buffer zone" with its access sidewalk was effectively annexed by Aware Woman as part of the F.A.C.E. facility at 1564 Dixie Way, Melbourne, Florida. Mr. Raney, the pro-life referral counselor, had a legal right to affiliate himself with the facility on this part of the structure in order to provide vital reproductive health services to young women trying to cope with crisis pregnancies, but was prevented from doing so by the Melbourne City Police.

Nevertheless, the district judge reviewing the complaint here and in the related case of *Raney v. Aware Woman Center for Choice, Inc*, 224 F.3d 1266 (11th Cir. 2000), refused any censure to the defendants, the abortion clinic in one case and the City in the other, for the gross and notorious abuse of the Supreme Court's trust.

It was only after the State trial judges had refused to take part in the sham contempt proceedings instigated by the abortion clinic and perpetrated by mercenary police officers wearing City of Melbourne badges that this abuse of the Supreme Court's trust came to an end. It may be that the black hole for human rights which developed at 1564 Dixie Way, Melbourne, Florida would still be in existence if it were up to the judges in the federal courts below.

It is critical that the United States Supreme Court review the decision of the appellate court because of its failure to uphold the dignity of our highest court.

II

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision violates the high standard of concern for women's

lives and health enunciated by this Court in abortion cases from *Roe* and *Doe* to *Stenberg*.

The concept which has consistently guided the United States Supreme Court in its abortion decisions has been its primary concern for the lives and health of pregnant women. This principal has resonated through the decisions of *Roe v. Wade*, 35 L.Ed 2d 147 (1973) and *Doe v. Bolton*, 35 L.Ed. 2d 201 (1973) to *Stenberg v. Carhart*, 147 L.Ed. 743 (2000).

The referral counselor bringing this F.A.C.E. action against the City of Melbourne was at all times an unpaid volunteer seeking only the best in care and help for desperate young women at 1564 Dixie Way, Melbourne, Florida. He obtained the appropriate training in abortion counseling. His services were essential to the proper operation of this facility. He provided vital referral information at his own expense. Not only were the F.A.C.E. rights of this counselor violated by the numerous blockades of the clinic buffer zone carried out by the Melbourne City Police, more importantly, the lives and health of thousands of innocent young women were jeopardized by this wrong doing.

It is apparent that the judges below are willing to use a distorted decision, specifically *Raney v. Aware Woman Center for Choice, Inc.* (*supra*) to protect the abortion industry at the expense of the lives and health of pregnant girls.

III

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision has deviated from the concept of allowing sympathetic, trained volunteers to act as abortion

counselors, as first described in *Roe* and later regulated in *Schenck* and most recently in *Hill.*

The United States Supreme Court reviewed the recommendations of many relevant organizations in its *Roe v. Wade* (*supra*) decision, demonstrating its concern that women contemplating abortion should have counseling opportunities readily available to them.

Four years ago, this Court approved of pro-life counselors standing near the doorway to abortion clinics where they could provide written referral information and engage in non-threatening conversations with people coming to and leaving the clinic. *Schenck v. Pro Choice Network*, 519 U.S. 357 (1997).

Several months ago, this Court announced in *Hill v. Colorado*, 147 L.Ed. 2d 597 (2000), that it found no fault with sensitive, legitimate counselors providing referral information while standing by the entrance to abortion clinics.

To the contrary, the Court of Appeals would allow abortion clinics and their well-armed police allies to threaten law-abiding referral counselors and prevent them from lawfully providing their essential services in abortion facilities to desperate young women dealing with what may be the most critical decision of their entire lives.

IV

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision has deviated from the standard provided by this Court in *Casey* which provides that pregnant women

considering abortion can receive truthful, relevant information.

This Court thoroughly dissected the decision-making process in abortion quandaries in *Planned Parenthood v. v.Casey*, 112 S.Ct. 2791 (1992). Truthful facts, non-misleading information, are essential for informed decisions. Such facts can only be supplied by a counselor who is independent of the abortion clinic. While such counselor may adopt one or two local abortion clinics with which to be affiliated, these pro-life counselors must never be dominated or controlled by the abortion clinic.

Who else can discuss the possibility of an AIDS infection at a particular clinic due to the refusal of the abortionist to sterilize his equipment between procedures? Who else would warn young women about forced abortions at a particular clinic? Who else would tell potential customers about deaths and serious injuries at a particular abortion clinic if it were not for the referral counselors?

There must be independent pro-life counselors stationed at each abortion clinic - with F.A.C.E. protection - if the *Casey* (*supra*) covenant is to be kept.

V

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory power because its decision abandons the promise made by the Court of Appeals in *McKusick v. City of Melbourne* that it would protect civil rights in the *Madsen* buffer zone.

Linda McKusick repented of the abortion which she

had obtained at the Aware Woman clinic at 1564 Dixie Way, Melbourne, Florida. Carrying her Bible, she tried to walk on the public sidewalk in the "buffer zone" where she planned to pray and seek forgiveness. The Melbourne City Police threatened to arrest her for doing so. *McKusick v. City of Melbourne*, 96 F.3d 478 (11th Cir. 1996).

The Court of Appeals promised in that case to protect civil rights from violation by the Melbourne City Police in the *Madsen* buffer zone, saying at page 489: "We note that if McKusick should ever be . . . punished for the exercise of her First Amendment rights, she will have remedies through which to vindicate those rights." It did not keep that promise, so far as Mr. Raney is concerned.

The United States Supreme Court addressed such concerns in *Planned Parenthood v. Casey* (*supra*) at page 2815:

> Some cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular, or who refuses to work to undermine the decision or force its reversal. The price may be criticism or ostracism, or it may be violence. An extra price will be paid by those who themselves disapprove of the decision's results when viewed outside of constitutional terms, but who nevertheless struggle to accept it, because they respect the rule of law. To all those who will be so tested by the following, the Court implicitly undertakes to remain steadfast, lest in the end a price be paid for nothing. The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and the

> understanding of the issue has not changed so fundamentally as to render the commitment obsolete.

Meredith Raney has endeavored to follow the law of the land. He should not be deprived by the U.S. Court of Appeals of its promise to protect his civil rights in the *Madsen* buffer zone.

VI

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of proceedings as to call for an exercise of this Court's supervisory authority by failing to follow its own decision in *Cheffer v. Reno* which provides that access to the entrances of abortion clinics is part of interstate commerce, in effect providing *forum* opportunities for F.A.C.E.-protected pro-life referral counselors in these facilities.

The referral counselor, Meredith Raney, has trusted that the United States Supreme Court would remain steadfast in its abortion decisions, such as *Madsen* (*supra*), *Schenck* (*supra*) and *Roe* (*supra*). Likewise, he has relied on the Court of Appeals decision in *Cheffer v. Reno*, 55 F.3d 1517 (11th Cir. 1995).

Charles Wilson, then U.S. Attorney for the Middle District of Florida, and Janet Reno, then Attorney General of the United States, were sued in their official capacities by two pro-life women seeking to invalidate F.A.C.E. They were unsuccessful because the U.S. Court of Appeals decided that this legislation resulted from an appropriate use by Congress of its authority under the Commerce Clause, *Cheffer v. Reno*, (*supra*), in effect providing a *forum* opportunity in the

facility for FA.C.E. protected pro-life referral counselors.

Said this Court in *Casey* (*supra*) at page 2808: "The obligation to follow precedent begins with necessity and a contrary necessity marks its outer limit. With Cardozo, we recognize that no judicial system could do society's work if it eyed each issue afresh in every case that raised it." Meredith Raney agrees that the Court of Appeals, too, should have remained steadfast to its *Cheffer v. Reno* (*supra*) decision.

VII

The petition should be granted because the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power by failing to maintain the constitutional standard of "good Behaviour" required of federal judges.

Article III, Section 1 of the United States Constitution says that federal judges should maintain a standard of "good Behaviour".

Instead, the Court of Appeals has entered a decision for which it should personally apologize to Meredith Raney. It has called him "an admitted anti-abortion activist" which is the same sort of description applied to deranged clinic bombers and to assassins of abortionists. It states that Mr. Raney alleged in this case that "police . . . actually arrested him three times for violating a judicial injunction" when in truth he made no such allegation. And, while there were arrests in a related case, all of those charges were dismissed. The Court of Appeals should have never mentioned the arrests, but since it did so, it should have also published the truth about the dismissals.

Additionally, the Court of Appeals has written "We perceive no merit in Raney's factually groundless assertion that the district court judge was biased in favor of the Clinic." That the district judge openly engaged in name-calling and apparently distorted the record and misstated key allegations would not be viewed by a reasonable person as a "factually groundless assertion."

This same reasonable person would understand that the Court of Appeals was not conducting itself according to the Constitutional standard of Article III, Section 1 which requires "good Behaviour" of federal judges.

VIII

The petition should be granted because the United States Court of Appeals entered a decision in conflict with a nationally important ruling of another U.S. Court of Appeals which proclaims the duty of the appellate courts to maintain the integrity of district courts.

Another circuit court of appeals has determined that name-calling by a district judge shows bias or prejudice on the part of the judge and must not be tolerated. *Mitchell v. Maynard*, 80 F.3d 1433 (10th Cir. 1996). At page 1450, that Court of Appeals stated : "We are also mindful that 'charges of misconduct or prejudice leveled at trial judges should not be lightly made and, once made, should not be casually treated by a reviewing court.'"

In the present case, the district court judge has not only engaged in name-calling by referring to Mr. Raney as "a self-proclaimed 'counselor'" after having reviewed his training in the companion F.A.C.E. action against Aware Woman, but worse yet, she has intentionally rewritten key allegations in order to buttress her erroneous ruling.

An abortion "clinic" is generally much smaller and occupies less territory than an abortion "facility". Under F.A.C.E. (18 U.S.C. §248) a facility includes the building or structure in which it is located. Thus, the entire Empire State Building, were there to be an abortion clinic located in one of its offices, would be a F.A.C.E. "facility". The "clinic", on the other hand, would consist of one office out of hundreds. Thus, the term "facility", encompassing as it does the entire structure, occupies a much larger area.

The district judge intentionally changed Mr. Raney's allegation to state that he sought to provide referral counseling in the "clinic". This is not true. He sought to provide his referral counseling services in the Aware Woman "facility" where he had a lawful right to be.

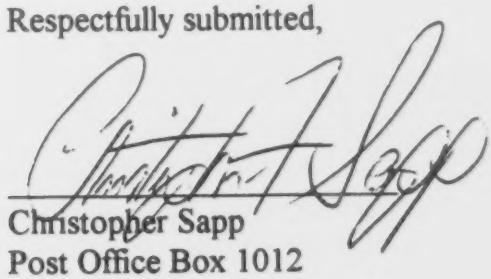
Lastly, the district judge wrote that the services were offered only to "passers-by on the sidewalk *outside* a Clinic which he desires to enter." The truth is that the sidewalk was *inside* the boundaries of the facility and there were no "passers-by", only those persons with Aware Woman approval: that is, no one on the access sidewalk was passing by this facility. They were going in or coming out of the facility.

Clearly, the U.S. Court of Appeals has failed in its responsibility to protect the integrity of the district courts within its circuit.

CONCLUSION

Meredith T. Raney, Jr. respectfully requests that this Court grant a writ of certiorari in order to correct the many grievous errors in the courts below, particularly those which undermine the dignity and integrity of the entire federal judicial system. It is not this lone referral counselor who needs the Court's help so much as the millions of distraught young women trying to deal with crisis pregnancies who need the essential services which he and many others like him are trying to provide.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:99-CV-416-ORL-19B
(Filed March 8, 2000)

MEREDITH T. RANEY, JR.,
Plaintiff,

v.

City of Melbourne, Florida,
Defendant.

ORDER

This cause came before the Court on the following matters:

1) Defendant the City of Melbourne, Florida's Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss (Doc. No. 5, filed May 3, 1999); Plaintiff Meredith T. Raney, Jr.'s Memorandum of Law in Opposition to Motion to Dismiss (Doc. No. 7, filed May 20, 1999);

2) Plaintiff Meredith T. Raney, Jr.'s Motion to Strike Insufficient Defenses and Other Matter and Memorandum of Law in Support (Doc. No. 7, filed May 20, 1999); and Defendant's Memorandum of Law in Opposition to Plaintiff's Motion to Strike (Doc. No. 18, filed September 7, 1999).

I. BACKGROUND

Plaintiff Meredith T. Raney, Jr. ("Raney") brings this suit under 18 U.S.C. §248, Freedom of Access to Clinic Entrances Act of 1994 ("FACE"), against Defendant the City of Melbourne, Florida. Raney alleges that Defendant unlawfully interfered with, threatened, and physically prevented him from providing "reproductive health services" to men and women when they were entering and leaving a "facility" located at 1564 Dixie Way, Melbourne, Florida ("the Clinic"). (Doc. No. 1). Defendant moves to dismiss Raney's complaint for failure to state a claim, and Raney has moved to strike Defendant's motion to dismiss and memorandum. See (Doc. Nos. 5 & 7). Because it is clear from a reading of the complaint and the exhibits attached thereto that Raney is *not* a reproductive health services provider as defined by FACE, Defendant's motion to dismiss will be granted.

II. MOTION TO STRIKE

Initially, the Court will resolve Raney's motion to strike pursuant to Federal Rule of Civil Procedure 12(f). See (Doc. No. 7). Federal Rule of Civil Procedure 12(f) provides that: "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent and scandalous matter." FED. R. CIV. P. 12(f). Motions to strike are looked on with disfavor, and are rarely granted.

Citing no cases in support, Raney argues that Defendant's motion and memorandum must be stricken because it is "void of any sufficient defense or grounds for dismissal of the Plaintiff's Complaint . . . . [and because the motion] mischaracterizes this action and related matters, including the decision of this District Court in Raney v. Aware Woman, 97-1197-CV-ORL-19B." Id. at ¶¶ 11 & 13. Defendant's Motion to Dismiss and Memorandum of Law in Support is not redundant, immaterial, impertinent or scandalous; thus, Raney's motion to strike is **DENIED.**

III. MOTION TO DISMISS

For purposes of a motion to dismiss, this Court must view the allegations of Raney's complaint in the light most favorable to him, consider the allegations of the complaint as true, and accept all reasonable inferences therefrom. Jackson v. Okaloosa County, Fla., 21 F.3d 1532, 1534 (11th Cir. 1994); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Furthermore, this Court must limit its consideration to the pleadings *and written instruments attached as exhibits thereto.* See Fed.R.Civ.P. 10(c) (emphasis added); GSW, Inc. v. Long County, Ga., 999 F.2d 1508, 1510 (11th Cir. 1993).

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hunnings v. Texaco, Inc., 29 F. 3d 1480, 1483 (11th Cir. 1994). Conclusory allegations and unwarranted factual deductions are not accepted as true. Gersten v. Rundle, 833 F. Supp. 906, 910 (S.D. Fla. 1993) (citing Associated Builders, Inc. v. Alabama Power Co., 505 F.2d 97, 100 (5th Cir. 1974)).[1]

IV. FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT

FACE provides in relevant part:

> (a) Prohibited activities.- - Whoever
>
> (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

. . .

> shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c) . . . .

Subsection (c) provides in relevant part:

> (A) In general. - - Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action . . ., except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide . .. services in a facility that provides reproductive health services . . . .

18 U.S.C. §248 (c)(1)(A).

FACE limits the class of prospective plaintiffs to persons "involved in providing or seeking to provide, or obtaining or seeking to obtain, services *in* a *facility* that

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[1]Defendant attached four exhibits to its Motion to Dismiss: (a) Raney's Complaint filed against Defendant in the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida; (b) A notice of Dismissal without Prejudice of Raney's state court complaint; (c) Defendant's answer to Raney's state court complaint; and (d) an order by this Court in Raney v. Aware Woman Center For Choice, Inc., Case Number 97-1197-CIV-ORL-19. The Court declines Defendant's invitation to consider the complaint and documents attached to Raney's Complaint in light of Raney's "multiple prior Complaints against the City and the Aware Women's Center Clinic in Melbourne, including [plaintiff's] sworn testimony therein." (Doc. No. 5, at 13).

provides *reproductive health services . . . .*" 18 U.S.C. §248(c)(1)(A) (emphasis added). See id. In identifying this class of potential plaintiffs, the statute utilizes two defined terms: "facility" and "reproductive health services." The term "reproductive health services" " includes medical, surgical, counseling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy" which are "provided *in* a hospital, clinic, physician's office , or other facility." See 18 U.S.C. §248 (e)(5) (emphasis added). Facility "includes a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located." 18 U.S.C. §248(e) (1).

The language of the statute which defines the provision of reproductive health services in the context of a "facility", expresses Congressional intent that the protections afforded by FACE extend only to those who are properly affiliated with a facility. The plain import of the statute is that a Plaintiff is not a "reproductive health provider" unless he or she provides such services "in a facility." See 18 U.S.C. §248(c)(1)(A).

To provide reproductive health services "in a facility," one must, at the very least, be affiliated with the facility either as an employee or a volunteer. See United States v. Hill 893 F.Supp. 1034, 1039 (N.D. Fla. 1994) (finding that an abortion clinic escort was protected by FACE); United States v. Dinwiddle, 76 F.3d 913, 926-27 (8th Cir.) (holding that a maintenance worker at an abortion clinic was protected by FACE), cert. denied, Dinwiddle v. United States, 519 U.S. 1043 (1996); see also Greenhut v. Hand, 996 F.Supp. 372 (D.N.J. 1998) (finding that an "on call" volunteer for a pro-life organization which provides "reproductive health services" is entitled to statutory damages under FACE)[2]

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[2]Both parties point to Greenhut v. Hand, 996 F.Supp. 372

The requirement that a plaintiff be affiliated with a clinic before such person may be considered a "reproductive

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(D.N.J. 1998), in support of their respective positions on the standing issue. See (Doc. No. 7 at 7); (Doc. No. 5, at 5) (suggesting that Greenhut is "neither dispositive nor compelling upon this court"). An issue before the Greenhut court was whether the plaintiff was a provider of "reproductive health services" under FACE Id. at 375. The Greenhut plaintiff was a volunteer at Birthright, a pro-life organization which "provides pregnant women with guidance, practical and emotional support during pregnancy and afterwards in some cases, referrals to doctors and other providers of medical services, referral services to community resources, limited financial support, maternity and baby clothes, free pregnancy tests and information relating to pregnancy, fetal development and alternatives to abortion." See id. at 373-74. The plaintiff brought suit against an individual who had left harassing and threatening phone calls on plaintiff's answering machine. See id. Defendant argued that plaintiff was not a provider of reproductive health services because she was untrained in the field of counseling or reproductive care, and "because the services provided are not medical in nature but consist of merely guidance, counseling and referral services." Id. The Greenhut court disagreed, noting that "nothing in the statute indicates that it covers [only] . . . doctors, nurses, or social workers." Id. at 376. Distinguishing the Greenhut plaintiff from a hypothetical person who might offer his or her pregnant neighbor a referral to a pediatrician, the Greenhut court reasoned that a layperson with minimal training may be considered a "reproductive health service" provider under FACE where that person provides such services through a facility such as Birthright. See Id. at 375-76 (observing that courts "finding that [FACE] is content-neutral with respect to a First Amendment analysis . . . have noted that FACE also applies to '*facilities* offering pregnant women counseling about alternatives to abortion'") (quoting American Life League, Inc. v. Reno, 47 F.3d 642, 649 (4th Cir.), cert. denied, 516 U.S. 809 (1995)); see also Riely v. Reno, 860 F.Supp. 693, 702 (D.Ariz. 1994). Thus, it is clear from the court's reasoning in Greenhut, that a person's status as a provider of "reproductive health services" under FACE turns on whether the person is affiliated with a "facility." See id.

health services provider" under FACE also follows from the statute's legislative history and from case law rejecting challenges to FACE under the Commerce Clause.[3] The legislative history shows that FACE was enacted to regulate the provision of reproductive health services through clinics, and the protection afforded individual "providers" under FACE was included so that the clinics that such providers *work for* would be better able to operate in interstate commerce. See S. REP. No. 103-117, at 3 (1993) (stating that the obstructive activities of abortion protestors "is barring access to *facilities* that provide abortion services and endangering the lives and well-being of the health care providers *who work there* and the patients who seek their services) (emphasis added), quoted in Terry v. Reno, 101 F. 3d 1412, 1416 (D.C. Cir. 1996), cert. denied 520 U.S. 1264 (1997); see also Hill, 893 F.Supp, at 1039 (explaining that Congress passed FACE due to concern about the safety of persons "who are *essential* to the provision of *clinic* services") (emphasis added).

Several circuit court decisions also support the notion that the protection afforded to reproductive health care "providers" under FACE is proper because the welfare of the provider has a direct impact on the facility for which he or she works. For instance, in Cheffer v. Reno, the Eleventh Circuit Court of Appeals specifically found that "in protecting the commercial activities of reproductive health providers,

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[3]Immediately after FACE was enacted, it was subjected to a flurry of challenges on various constitutional grounds. The courts faced with these cases reviewed the legislative history and text of the statute in great detail and opined on FACE's purpose and scope. See e.g., United States v. Soderna, 82 F.3d 1370 (7th Cir.), cert. denied, Hatch v. United States, 519 U.S. 1006 (1996); United States v. DinWiddie, 76 F.3d 913 (8th Cir.), cert. denied, 519 U.S. 1043 (1996); United States v. Wilson, 73 F.3d 675 (7th Cir. 1995),

[FACE] protects and regulates commercial enterprises operating in interstate commerce." 55 F.3d 1517, 1520 (11th Cir. 1995). Generally, these courts relied on the commercial nature of reproductive health facilities as justification for the legislature's exercise of its powers under the Commerce Clause. See e.g. Terry, 101 F. 3d at 1413-16 (listing the various ways that clinics engage in interstate commerce set forth at S.REP No. 103-117 , at 31 (1993)); United States v. Wilson 73 F.3d 675, 683 (7th Cir. 1995) (stating that the prohibitions provided in FACE are intended to benefit "reproductive health facilities" which have been "targeted" by disruptive protest activities), cert. denied, 519 U.S. 806 (1996); Cheffer, 55 F.3d at 1519-20.

It follows that an individual acting on his own to volunteer reproductive health services without affiliation to any facility would not meet the impact on interstate commerce that Congress relied on in enacting FACE and that courts relied on in upholding FACE. This construction of the statute that would extend a civil action under FACE to any self-proclaimed "reproductive health service" provider would almost surely exceed Congress' power under the Commerce Clause. Likewise, a reading of the FACE that would guarantee such persons access to a "facility" where they are not welcome would be contrary to the objective of FACE which is to ensure the stability of the national market for reproductive health services.

V. ANALYSIS

Defendant maintains that Raney is not a member of the class of persons protected by FACE, and moves to dismiss

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cert denied, 519 U.S. 806 (1996); Cheffer v. Reno, 55 F.3d 1517 (11th Cir. 1995); see also, United States v. Gregg, 32 F.Supp.2d 151 (D.N.J. 1998); United States v. Scott, 958 F. Supp. 761 (D.Conn. 1997); United States v. Hill, 893 F.Supp. 1034 (N.D. Fla. 1994).

Raney's complaint for lack of standing. [4] (Doc. No. 5). Raney contends that he has standing and protection under FACE because he "is a provider of reproductive health services as defined by F.A.C.E." (Doc. No. 1 at ¶ 9). Raney provides the following facts in support of his allegation that he is a "reproductive health services provider":

> Some people who know elective abortion is wrong expressed their opinions by protest methods which did little to help the real victims of this brutal practice. Fortunately, there have been some caring people who reach out to the mothers and fathers of unborn children offering love and help rather than debate or condemnation. These are the individuals sometimes called '*sidewalk counselors*', but who are actually providers of reproductive health services as defined and protected by F.A.C.E.
>
> These pro-life providers of reproductive health services for many years have suffered abuse at the hands of over-zealous police officials. However, since May 26, 1994, the effective date of F.A.C.E., such abuse is prohibited by Federal law and no longer can municipalities intentionally attempt to intimidate pro-life providers of reproductive health services with impunity.

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[4] Defendant alleged five bases for the dismissal of Plaintiff's complaint: failure to state a claim; failure to pay costs in similar actions in state and federal courts; absence of standing; and statute of limitations. See (Doc. No. 5, at 1-2). Because the Court finds that Plaintiff does not have standing to bring the suit, the Court does address Defendant's remaining arguments.

> For that reason, this civil rights action is brought against the Defendant City of Melbourne, Florida by Plaintiff Meredith T. Raney, Jr., *one of these providers of reproductive health services* protected by F.A.C.E.
>
> * * *
>
> At numerous times, . . . Plaintiff, Meredith T. Raney, Jr. *sought to be inside the boundary of [the Clinic]*, providing or seeking to provide reproductive health services as defined by [FACE], such as counseling women and men as to the spiritual, moral, medical, physical and psychological health aspects of adoption, pregnancy termination, fetal development, and prenatal care; and offering financial assistance and written referral information to other related care-givers, not only when said women and men were entering the facility but also upon their leaving.
>
> * * *
>
> Because [Plaintiff] was seeking to be so engaged *in* the [Clinic], Plaintiff Meredith T. Raney, Jr. was subjected to unlawful intentional attempted intimidation by the Defendant, City of Melbourne, Florida, that prevented him from providing reproductive health services as defined by FACE *in the [Clinic]*.

(Doc. No. 1, at ¶¶6, 7, 11 & 12) (emphasis added).

> The exhibits attached to the complaint include letters dated April 15, 1993 and April 19, 1993 from Raney to City Manager Sam Halter (the "April 15 Letter") and to City Attorney James Reinman ("the April 19 Letter") . (Doc. No. 1, at Exh. B & C). The April 15 Letter provides, in relevant part:
>
> As a Melbourne taxpayer, I object to my taxes being spent by the Melbourne Police Department to enforce [Judge McGregor's] civil injunction that creates a buffer zone around the [Clinic] . . . .
>
> * * *
>
> By arresting suspected violators of the injunction when the Clinic has other avenues of enforcement . . ., the Melbourne Police Department has shown favoritism toward the Clinic side of the abortion issue at the taxpayers [sic] expense . . . .

See (Doc. No. 1, at Exhs. B & C). Finally, Raney attached as Exhibit F, a letter dated August 4, 1993 from Patricia Baird-Windle, President and C.E.O. of the Clinic to Chief Keith Chandler of the Melbourne Police Department (the "Baird-Windle Letter"). (Doc. No. 1, Exh. F). The Baird-Windle Letter clearly expresses the Clinic's disfavor of Raney providing in relevant part: "You are probably aware of the situation concerning the tracking of license plates by Meredith Raney and his conspiratorial thugs . . . . Raney and the other radicals are attempting end run maneuvers at every turn." See id.

These letters and the allegations of Raney's complaint which expressly identifies Raney as a "sidewalk counselor"

are entirely inconsistent with Raney's conclusory allegation that he "is a provider of reproductive health service as defined by F.A.C.E."[5] (Doc. No. 1, at ¶ 9). The term "sidewalk counselor" is commonly understood to refer to "pro-life" activists who attempt to persuade actual and prospective abortion clinic clients to choose not to have an abortion. See e.g. Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357, 363 (1997); Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994); United States v. Scott, 187 F.3d 282 (2d Cir. 1999); Cook v. Reno, 74 F.3d 97 (5th Cir. 1996); New York State Nat'l Org. for Women v. Terry, 952 F.Supp. 1033, 1036 (S.D.N.Y. 1997), aff'd, 159 F.3d 86 (2d Cir. 1998), cert. denied, Pearson v. Planned Parenthood Margaret Sanger Clinic, 119 S.Ct. 2336 (1999); Operation Rescue-Nat'l v. Planned Parenthood of Houston and S.E. Tex., Inc., 975 S.W. 2d 546, 550, 574-76 (Tex. 1997).[6] This "counseling" occurs on the sidewalks and public areas near abortion clinics. See e.g. Schenck, 519 U.S. at 363. FACE does not ban "sidewalk counseling" outright, but neither does it protect "sidewalk counseling" as a "reproductive health service" because sidewalk counselors do not provide their services "in a facility" as defined by FACE.

Raney argues that his complaint should not be dismissed because FACE "is not a pro-abortion law but one which protects pro-life counselors equally well." See (Doc.

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[5]The Court need not accept this conclusory allegation as true, especially where, as here, a review of the Complaint and the attached exhibits shows that Raney's assertion that he is a reproductive health services provider is not warranted. See Gersten, 833 F.Supp. at 910.

[6]The term "sidewalk counselor" appears in well over one hundred federal and state cases. Search of WESTLAW, Allcases Library (March 6, 2000).

No. 7, at ¶ 24). Raney's argument is misplaced because this Court does not dismiss Raney's complaint based on a finding that pro-life "counselors" are not entitled to the FACE's protective provisions. The law is clear that FACE applies equally to all providers of reproductive health services. See United States v. Soderna, 82 F.3d 1370 (7th Cir. 1996); Greenhut, 996 F.Supp. at 375. This equal treatment means that FACE guarantees no self-proclaimed "counselor", whether pro-choice or pro-life, access to a "facility" where he or she is not welcome. See supra Part IV; see also Cook v. Reno, 859 F. Supp. 1008, 1011 (W.D. La. 1994) (stating that the language of FACE is "complete and regular on its face and leads to no absurd consequences").

Here, even accepting the allegations in the complaint as true and construing those allegations in the light most favorable to plaintiff, it would be unreasonable to infer that Raney is or ever was an authorized volunteer or employee of the Clinic. He is, at best, a self-proclaimed "counselor" who "offer[s] love and help" to passers-by on the sidewalk *outside* a Clinic which he desires to enter. See (Doc. No. 1); (Doc. No. 1, Exh. F). Thus, Raney is not entitled to the protections provided by FACE which are properly reserved for the actual patients and personnel of reproductive health service facilities. See 18 U.S.C. § 248; e.g. Terry, 101 F.3d 1412 (D.C. Cir. 1996).

CONCLUSION

For the foregoing reasons, the Court **RULES:**

1) Defendant the City of Melbourne, Florida's Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss (Doc. No. 5) is **GRANTED.**

2) Plaintiff Meredith T. Raney, Jr.'s Motion to Strike Insufficient Defenses and Other Matter and Memorandum of

Law in Support (Doc. No. 7) is **DENIED.**

3) Plaintiff's Complaint (Doc. No. 1) is **DISMISSED.**

DONE AND ORDERED at Orlando, Florida, this 8th day of March, 2000.

/s/
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record

APPENDIX B

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-11403
Non-Argument Calendar

D.C. Docket No. 99-00416-6:99CV-ORL-19B

MEREDITH T. RANEY, JR.,

Plaintiff-Appellant,

versus

CITY OF MELBOURNE, FLORIDA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(November 15, 2000)

Before TJOFLAT, DUBINA and KRAVITCH, Circuit Judges

PER CURIAM:

Meredith T. Raney, Jr. appeals the district court's order dismissing his claims brought under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248 (the "FACE Act") against the City of Melbourne, Florida (the "City"). We affirm.

Between June 30, 1994 and June 8, 1996, Raney, an admitted anti-abortion activist attempted to offer pro-life counseling and referral services to women on the sidewalk outside the Aware Women Center for Choice, Inc. (The "Clinic"). Raney alleges that police regularly threatened him with arrest for engaging in such activities and actually arrested him three times for violating a judicial injunction that prohibited anti-abortion protestors from entering a specified thirty-six foot buffer zone around the Clinic. Raney sued the City for violating the FACE Act[1] by allegedly interfering with, threatening, and physically prevented him from providing "reproductive health services" to men and women when they were entering or leaving the clinic.

Raney raises several issues on appeal. First, Raney argues that the district court erred in determining that Raney lacked standing as a reproductive health provider to bring an action under the FACE Act. Second, Raney asserts that the district court erred in denying his motion to strike the City's motion to dismiss on the grounds that the motion to dismiss was allegedly based on defenses that were insufficient as a matter of law. Third, Raney argues that his case should be remanded to a different judge because the district judge who decided the case was allegedly "prejudiced in favor of the abortion industry."

We review the dismissal of a complaint under Rule 12(b)(6) *de novo*. Marsh v. Butler County, Alabama, 225

[1]The FACE Act guarantees freedom of access to the entrances of reproductive health facilities. Raney v. Aware Woman Center For Choice, 224 F.3d 1266, 1268 (11th Cir. 2000)

F.3d 1243,1246 (11th Cir. 2000). In conducting such review, we keep in mind that a court should not dismiss a complaint for failure to state a claim "' unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. (citation omitted).

The outcome of Raney's case is controlled by our decision in the recent case, Raney v. Aware Woman Ctr. for Choice, 224 F. 3d 1266 (11th Cir. 2000). In Raney, we held that this same plaintiff could not bring a FACE Act action against the Clinic because a person providing reproductive counseling on the sidewalk outside a clinic may not claim that "he was in a facility [that provides reproductive health services] nor that he was offering the type of reproductive health services to which the FACT Act protects access." Id. at 1269. Therefore, we affirm the district court's decision to dismiss Raney's FACE Act action for lack of standing and to deny Raney's motion to strike.[2]

AFFIRMED.

[2]We perceive no merit in Raney's factually groundless assertion that the district court judge was biased in favor of the Clinic.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 00-11403-BB

(filed JAN 05 2001)

MEREDITH T. RANEY, JR.,

Plaintiff-Appellant,

versus

CITY OF MELBOURNE, FLORIDA,

Defendant-Appellee.

- - - - - - - - - - - - -

On Appeal from the United States District Court for the Middle District of Florida

- - - - - - - - - - - - -

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

(Opinion_____, 11th Cir., 19__, __F.2d____).

Before: TJOFLAT, DUBINA and KRAVITCH, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no member of this panel nor other judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/
Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)

Supreme Court, U.S.
FILED
MAR 26 2001
OFFICE OF THE CLERK

No. 00-1350

In The

Supreme Court of the United States

MEREDITH T. RANEY, JR.,

Petitioner,

v.

CITY OF MELBOURNE, FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF OF RESPONDENT

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QUESTION PRESENTED (RESTATED)

I. WHETHER THE DISTRICT COURT AND CIRCUIT COURT OF APPEALS PROPERLY FOUND THAT PLAINTIFF RANEY WAS NOT ENTITLED TO THE PROTECTIONS PROVIDED BY THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT.

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United States v. Wilson, 73 F. 3d 675 (7th Cir. 1995), *cert. den.*, 519 U.S. 806 (1996) 5

PRELIMINARY STATEMENT

In this Brief, the Respondent City of Melbourne, Florida will also be referred to as Defendant as it stood below, or as the City. Petitioner Meredith T. Raney, Jr. will also be referred to as the Plaintiff, as below.

STATEMENT OF THE CASE

Since the Order at issue is a final dismissal of Plaintiff's Complaint, the District Court stated in its Order that it was, " . . . **accepting the allegations in the Complaint as true and construing those allegations in the light most favorable to Plaintiff . . .** ". In pertinent part, U.S. District Judge Patricia Fawsett dismissed Plaintiff's Complaint because it was brought under the provisions of the Freedom of Access to Clinic Entrances Act. 18 U.S.C. § 248. The District Judge found that:

> **"Here, even accepting the allegations in the Complaint as true and construing those allegations in the light most favorable to Plaintiff, it would be unreasonable to infer that Raney is or ever was an authorized volunteer or employee of the clinic. He is, at best, a self-proclaimed 'counselor' who 'offers love and help' to passers-by on the sidewalk *outside* a clinic which he desires to enter. (Record reference omitted) Thus Raney is not entitled to the protections provided by FACE, which are properly reserved for the actual patients and personnel of reproductive health service facilities."**

SUMMARY OF ARGUMENT

Plaintiff Raney cannot state a cause of action under the Freedom of Access to Clinic Entrances Act ("FACE"). An action brought under FACE may be brought **" . . . only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services."** 18 U.S.C. § 248(c)(1)(A). The Act defines **"facility"** to include a hospital, clinic, doctor's office, or other facility that provides reproductive health services. 18 U.S.C § 248(e)(1).

In his Complaint, Plaintiff Raney alleged that the Defendant City's police officers wrongfully prevented him from providing reproductive health services on the sidewalk outside the Aware Woman's Clinic in the City. Raney was arrested for violating a judicial injunction, which created a buffer zone around the clinic within which anti-abortion activists were not to enter. The Eleventh Circuit Court previously held, in Plaintiff Raney's separate case brought under FACE against the clinic itself, that

> **"He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services to which the FACE Act protects access."** ***Raney v. Aware Woman's Center for Choice, Inc.,*** **224 F. 3d 1266, Case No. 99-14122 (11th Cir. 8/30/2000).**

Given the nearly identical nature of Plaintiff Raney's claims against the City here, also brought under the FACE Act, the Order of dismissal was properly AFFIRMED by the Eleventh Circuit. Mr. Raney's Petition

filed with this Honorable Court should also thus be DENIED.

ARGUMENT

THE DISTRICT COURT AND CIRCUIT COURT PROPERLY FOUND THAT PLAINTIFF RANEY WAS NOT ENTITLED TO THE PROTECTIONS PROVIDED BY THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT.

As borne out by the Eleventh Circuit Court's recent opinion in *Raney v. Aware Woman's Center for Choice,* 224 F. 3d 1266 (11th Cir. 8/30/2000), the Freedom of Access to Clinic Entrances Act was not intended to serve the interests of anti-abortion activists like Mr. Raney. At a minimum, this is now Mr. Raney's third lawsuit stemming from the same incidents in which he was arrested outside the Aware Woman's Clinic in Melbourne for violating the judicial injunction creating a buffer zone around the Clinic. The District Judge and Circuit Court properly found this latest effort by Mr. Raney to sue the City of Melbourne under the FACE Act must also fail. Nothing in Plaintiff Raney's Petition to this Court demonstrates to the contrary. Mr. Raney's Complaint was filed prior to the Circuit Court's opinion in *Raney v. Aware Woman's Center for Choice, Inc., supra.* That Opinion is directly on point, since it concludes with a specific finding why his action against the Clinic itself under FACE must fail:

> **"A FACE Act action may be brought 'only by a person involved in providing or seeking to**

> provide, or obtaining or seeking to obtain, services *in a facility* that provides reproductive health services . . . '. 18 U.S.C. § 248(c)(1)(A), (Emphasis added). The statute defines 'facility' to include 'a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located' (18 U.S.C. § 248(e)(1)). The 'reproductive health services' protected under the statute, must be provided 'in a hospital, clinic, physician's office or other facility . . . ". (18 U.S.C. § 248(e)(5).
>
> "By requiring that the person bringing a FACE action be seeking or providing reproductive health services in a facility, Congress recognized the difference between. trained professionals in work credentialed facilities and unregulated volunteer counselors who are not attached to recognized providers of reproductive health care. On each of the three occasions when Raney was arrested for violating the Madsen Injunction, he was standing on a sidewalk outside of the Woman's Center Clinic. He therefore can claim neither that he was in a facility nor that he was offering the type of reproductive health services to which the FACE Act protects access." *Raney v. Aware Woman's Center, supra,* p. 4-5.

None of the arguments in Plaintiff's Petition to this Court demonstrate any error in District Judge Fawsett's similar conclusion:

> "Because it is clear from a reading of the Complaint and the exhibits attached thereto that Raney is *not* a reproductive health services

provider as defined by FACE, Defendant's Motion to Dismiss will be granted."

The City's arguments for dismissal were in part based upon the District Court's entry of Summary Judgment against Plaintiff Raney in the earlier-filed case he brought under FACE against the Aware Woman's Clinic.

More importantly, the District Court's decision that Plaintiff Raney did not have *standing* to bring this action against the City under the Freedom of Access to Clinic Entrances Act was lawful and appropriate. The Act is clear that a Plaintiff is not a **"reproductive health services provider"** entitled to the FACE protections and remedies unless he or she actually provides such services in a **"facility."** 18 U.S.C. § 248(c)(1)(A). At the very least, a person seeking the protections of FACE must be, **" . . . affiliated with the facility either as an employee or an volunteer."**

The District Court and Circuit Court both properly found in this case that a Plaintiff must be *affiliated* with a clinic before being considered a **"reproductive health services provider"** under FACE. In support, the District Court Order cited both the statute's legislative history and interpreting case law. Simply put, the protections and prohibitions provided in the Act are intended to benefit reproductive health facilities such as the Aware Woman's Center in the City of Melbourne, Florida. That clinic was targeted for disruptive protest activities by anti-abortion activists such as Plaintiff Raney. (See also *United States v. Wilson*, 73 F. 3d 675, 683 (7th Cir. 1995) *cert. den.*, 519 U.S. 806 (1996); *Cheffer v. Reno*, 55 F. 3d 1517, 1520 (11th Cir. 1995).

As District Judge Fawsett properly found at the conclusion of the Court's analysis of FACE:

> **"Likewise, a reading of the FACE that would guarantee such persons access to a 'facility' where they are not welcome would be contrary to the objective of FACE, which is to insure the stability of the national market for reproductive health services." (R1-11-10).**

Ultimately, the District Judge's legal analysis was deemed appropriate by the Circuit Court in its opinion below *and* in *Raney v. Aware Woman's Center for Choice, Inc., supra.* After properly rejecting Plaintiff Raney's conclusory allegation that he is a provider of **"reproductive health services"** as defined by FACE, the District Judge placed Mr. Raney's activities in their proper context:

> **"The term 'sidewalk counselor' is commonly understood to refer to 'pro-life' activists who attempt to persuade actual and prospective abortion clinic clients to choose not to have an abortion. (Citations omitted). This 'counseling' occurs on the sidewalks and public areas near abortion clinics. (Citation omitted). FACE does not ban 'sidewalk counseling' outright, but neither does it protect 'sidewalk counseling' as a 'reproductive health service', because sidewalk counselors do not provide their services 'in a facility' as defined by FACE." (R1-11-14, 15).**

The District Judge thus concluded that, even construing Plaintiff Raney's allegations in the light most favorable to him, the Court cannot infer that Raney was an authorized employee or volunteer for the Aware

Woman's Clinic. He was thus not entitled to the protections provided by FACE, which were intended and reserved by Congress for the actual patients and employees of these clinics.

Thus Plaintiff Raney's attempt to sue the City of Melbourne, Florida under FACE for the lawful actions of its police officers in arresting him for violating the buffer zone judicially enacted around the Clinic was properly dismissed. Plaintiff Raney's varied and somewhat bizarre arguments in his appeal to the Circuit Court and Petition to this Court fail to demonstrate to the contrary. There was no evidence whatsoever in support of Plaintiff's final argument that the U.S. District Judge was biased or prejudiced in any manner. The District Court's Order on Appeal and the Eleventh Circuit Court's Opinion affirming same should both be AFFIRMED, and Plaintiff Raney's Petition to this Court *DENIED*.

CONCLUSION

For all the reasons stated herein or to be gleaned from a review of the pleadings and other documents in the Appendix to the Petition, the Defendant/Respondent City of Melbourne, Florida respectfully submits the Order of Dismissal entered by U.S. District Judge Patricia Fawsett, as AFFIRMED by the Eleventh Circuit Court of

Appeals, was proper under the law and facts. Mr. Raney's Petition should therefore be DENIED.

Respectfully submitted,

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(5)

No. 00-1350

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

Meredith T. Raney, Jr.,

Petitioner,

v.

City of Melbourne, Florida,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

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NOTE TO THE UNITED STATES SUPREME COURT OF RELATED PETITIONS ALREADY FILED WITH THE COURT

Meredith T. Raney, Jr. v. Aware Woman Center For Choice, Inc., et al., Supreme Court Number 00-1268.

Jane Roe, II v. Aware Woman Center For Choice, Inc., et al. Supreme Court Number 00-1301.

Ray Sienkiewicz v. John McDougall, individually, et al., Supreme Court no. 00-1365

Ray Sienkiewicz v. Larry Hart, individually, et al., Supreme Court no. 00-1419

Ray Sienkiewicz v. John McDougall, individually, et al. Supreme Court no. 00-1498

ADDITIONAL APPEAL HAS BEEN TAKEN

Ray Sienkiewicz was notified on March 26, 2001 that the district court had dismissed with prejudice the F.A.C.E. action against Larry Hart, individually, et al., which is the case from which the petition for writ of certiorari was brought in Supreme Court number 00-1419. The appeal was docketed with the court of appeals on April 5, 2001 A petition for writ of certiorari to review the case has been submitted to the Supreme Court.

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REPLY TO THE CITY OF MELBOURNE

This case is a particularly critical cornerstone in the series of related F.A.C.E. cases which are now before this Court.

There are some questions here which may never be answered. Was a brief in opposition to the plaintiff's motion to strike the defenses handed through the back door to the district judge? If so, by whom? Is there a "blackmail database" maintained by the abortion industry? If so, how does one get a fair trial when suing an abortion facility? We may never know the answers.

There are some misconceptions and some mistakes by the City of Melbourne which should be corrected. That will be done here.

First, the critical importance of this case should be discussed. Sadly, *Raney v. City of Melbourne* is quite remarkable because it points out the ease with which police officers and those who control them can be convinced to betray their public trust.

Betrayal is a time-honored evil in our culture.

"Back stabber" is a common name for those who dishonor the trust residing in them. One of the more memorable instances of such betrayal is memorialized in Shakespeare's play, Julius Caesar. It is from Caesar's dying exclamation "And you, too, Brutus?" that we have derived the English word "brutal". Webster's Ninth New Collegiate Dictionary, page 183.

A focal part of the Bible is the betrayal by Judas for the proverbial thirty pieces of silver. The New American Bible,

Luke, Chapter 22, verses 47, 48. Once again, history has provided our language with another name for one who misuses one's trust: a "judas". Webster's Ninth New Collegiate Dictionary. Page 653.

The facts alleged in the present case buttressed by the video tapes of related F.A.C.E. violations and the affidavits of some police victims in *Raney v. Aware Woman Center For Choice, Inc.*, 224 F.3d 1266 (11th Cir.2000), detail the magnitude of the betrayal by the City of Melbourne of the trust placed in it.

The document which creates the duties of the Melbourne police department is the City Charter provided by the State of Florida through its legislature. The appropriate portion is attached to Meredith Raney's complaint:

> **Sec. 3.11. Police department.**
>
> The police department under a chief of police shall be responsible for the enforcement of federal and state laws and city ordinances

Nothing is said in the Charter about putting the discretion and authority of these police officers in any auction block or peddling police presence like a common commodity of commerce. "Rent-a-Cop" and "Buy a Badge" programs are nothing new to our society. But the use of those hired guns have had socially acceptable utilization. For instance, the "hired guns" have never been knowingly used to guard those selling narcotics to children on school sidewalks. There would be unanimous condemnation.

It was not so in Melbourne. The police officers were used as nothing more that guard dogs to threaten and intimidate those who were trying to help young girls on the

public sidewalk of the City of Melbourne. Instead of upholding federal laws, they were committing thousands of violations of the federal F.A.C.E. Act.

In this case, part of the public sidewalk was included in the buffer zone of *Madsen v. Women's Health Center, Inc.*, 114 S.Ct.2516 (1994). That this buffer zone became part of the Aware Woman F.A.C.E. facility is conceded in *Raney v. Aware Woman*, in the Respondents Brief in Opposition. It was in that part of the facility that Meredith Raney sought to lovingly and lawfully offer referral and counseling help to young women.

Despite the fact that the police could see that there was nothing threatened except Aware Woman's profits by these F.A.C.E.-protected services, the City of Melbourne persisted in intimidating this counselor. They refused him the use of the part of the abortion facility owned by the City of Melbourne where he sought to protect the lives and health of young women.

The City of Melbourne openly abused the trust of the Supreme Court in the misuse of the injunction which the Court approved in *Madsen* (*supra*).

This betrayal of trust by the City of Melbourne was seized on by the three key plotters in the related cases. Charles Wilson, Janet Reno and William J. Clinton could see how easily local police could be convinced to sell-out the most vulnerable members of the public: distraught girls desperately seeking help with crisis pregnancies.

These police hirelings were not at the Aware Woman facility to respond to the piercing screams of Jane Roe, II, but to keep her from being warned of the dangers there. These

hirelings would have done nothing to help the child killed in the "assembly line" abortion in *Adams v. Family Planning Assoc. Med. Group, Inc.*, 733 N.E. 2d 766 (Ill. App. 2000), cited by Aware Woman in *Jane Roe, II,* in their own defense.

The fact is, the willingness of the City of Melbourne to betray young women, their lives and health, became the blueprint for the national model which, when implemented, led to the death last August of the mother in Lee County, Florida. She died of mistreatment at the Azima abortion facility where guard-dog deputies barred pro-life counselors from warning and helping her.

Yes, the City of Melbourne is an example - an example of betrayal, of daggers in the backs of the distraught girls so desperate for help and loving advice. The City has been a false beacon for other local governments. A shepherd would call the City of Melbourne " a judas goat"

Some of the errors which the City of Melbourne has presented to the Court should be corrected.

FACILITY OR CLINIC ?

Madsen (*supra*) did not give Aware Woman total control over that part of the facility which included the buffer zone. Meredith Raney was entitled to be in that portion of the facility, lawfully providing services defined by 18 U.S.C. §248.

F.A.C.E. defines a "facility" to include the building or structure in which the facility is located. 18 U.S.C. §248(e)(1).

The "facility", Aware Woman Center For Choice, Inc, was more than the walled-in portion of the building or

structure, it also included the parking area and the ingress/egress sidewalk, a portion of which was owned by the City of Melbourne.

Thus, this abortion facility had two owners, the Windles, or their corporation, and the City of Melbourne.

Meredith Raney was prevented from providing his F.A.C.E.-defined referral and counseling services "in the facility". Those services were designed to be utilized by young women "in the facility" and so are protected under that Act. 18 U.S.C. §248(e)(5).

SELF-PROCLAIMED COUNSELOR

While F.A.C.E. itself provides few details about the exact nature of the referral and counseling services which it protects, it is clear that they concern reproductive health services relating to pregnancy and the termination thereof. 18 U.S.C. §248 (e)(5).

In the related case of *Raney v. Aware Woman Center For Choice*, 224 F.3d 1266 (11th Cir. 2000), Meredith Raney had supplied the district judge with the topics he had studied in the crisis pregnancy course that he had completed. Those topics included:

1. Pregnancy testing.
2. Fetal development.
3. Prenatal care.
4. Abortion procedures.
5. Birth control.
6. Community resources for pregnant women.
7. Biblical teaching on abortion.
8. Issues and decision making.

This reproductivehealth service course was completed prior to 1994. The counselor also viewed various video tapes dealing with abortion.

Such topics appropriately are related to pregnancy, and termination thereof, and show that the district judge's name-calling was not warranted by the facts with which she was familiar. Meredith Raney is and was a F.A.C.E.-protected counselor.

F.A.C.E. VIOLATIONS OR UNLAWFUL ARREST

There were no arrests by the City of Melbourne of Meredith T. Raney, Jr. in any of the estimated 4,000 F.A.C.E. violations which are the subject of this civil action. F.A.C.E. prohibits threats, intimidation and interference, 18 U.S.C. §248 (a)(1).

While there were three arrests in the related case of *Raney v. Aware Woman Center For Choice, Inc.*, Supreme Court number 00-1268, each of the arrests occurred after the F.A.C.E. violations. All three charges were dismissed. The City of Melbourne needs all the red herrings it can drag past this Court. Neither this one or any others will save it from liability.

WANTED OR UNWANTED

There are other red herrings such as the newly proposed hurdle of being "wanted". This counselor sought to be in the part of the facility where he was legally entitled to be. The girls wanted and needed his services. It was immaterial if his services were wanted by anyone else.

Blacks were not wanted in the front of southern buses nor at the lunch counter in segregated stores.

The United States Supreme Court in *Madsen v. Women's Health Center, Inc.*(*supra*) ruled that the sidewalk in the buffer zone would be kept open for *forum* activities. As cases such as *Marsh v. Alabama*, 326 U.S. 501, 66 S.Ct. 276 (1946), have established, the Grace Marshes of this world are not always welcome on the sidewalks of interstate commerce, but whether the sidewalk be owned by the public or a private party, the civil rights of these unwelcome persons will still be protected.

Janet Greenhut was an unwanted volunteer at an abortion clinic in *Greenhut v. Hand*, 996 F.Supp. 372 (D.N.J. 1998). She was threatened with death if she continued coming to that facility. She prevailed in her F.A.C.E. action against the clinic worker who threatened her. Meredith Raney, like Janet Greenhut, affiliated himself (as in adopted) with the Aware Woman Center For Choice facility even though he was not wanted on any part of it by the City of Melbourne. Like Janet Greenhut, he was protected under F.A.C.E.

EXTRAJUDICIAL INFLUENCE

The facts of this case are not complex. The law is not complicated. Meredith Raney was unlawfully prevented by the City of Melbourne's police for providing F.A.C.E.-defined services in a certain part of a F.A.C.E.-defined facility.

The problem is that Charles Wilson has an obligation to protect himself and others from F.A.C.E. charges. So long as he sits on the court of appeals for the Eleventh Circuit, any well-informed reasonable person will believe that this case and the related cases are all subject to extrajudicial influence. *Liteky v. United States*, 114 S.Ct. 1147 (1994).

CONCLUSION

Meredith T. Raney, Jr. respectfully urges the Supreme Court to honor the covenant of *Planned Parenthood v. Casey* , 112 S.Ct. 2791 (1992) at page 2815.

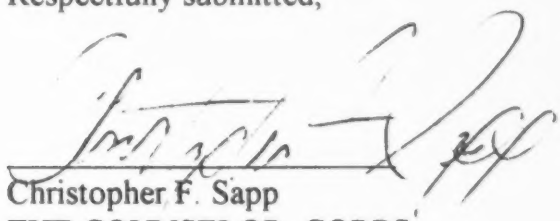
The *Casey* price has been paid, though, not by this counselor but by the innumerable young women - often just children - who are dying, dead, mutilated or injured because they were unlawfully prevented from receiving counseling help and loving kindness all over this nation.

This inhumane treatment by treacherous police forces led astray by the City of Melbourne should enkindle the wrath of this Court.

The abuse by the City of Melbourne of this Court's trust in approving the *Madsen* (*supra*) injunction should enkindle the wrath of this Court.

For the sake of the young women whose privacy, lives and health this Court has steadfastly promised to protect and so that the City of Melbourne can experience first hand the wrath of this Court, the writ should be issued.

Respectfully submitted,



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